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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/001,389

10/23/2001

Charles K. Wike JR.

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1315

26884

7590

06/30/2006

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EXAMINER

LE, UYEN CHAU N

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/001,389

Applicant(s)

WIKE ET AL.

Examiner

Uyen-Chau N. Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Prelim. Amdt/Amendment

1. Receipt is acknowledged of the Amendment filed 03/30/2006.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1, 21-22 and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Andersen et al (US 6333692 B1).

Re claim 1: Andersen et al discloses a method of operating a self-service checkout terminal (col. 9, lines 40-46) comprising the steps of: allowing consumer scanning of an item for purchase via a scanner; determining, after successfully scanning the item, whether the item has an active electronic article surveillance tag (figs. 2 and 4; col. 5, line 19 through col. 6, line 49); and allowing deactivation of the active electronic article surveillance tag by the consumer via an active electronic article surveillance tag deactivator after determining that the item has an electronic article surveillance tag (col. 9, lines 40-46).

Re claim 21: Andersen et al discloses a method of operating a checkout (col. 9, lines 40-46) terminal comprising: scanning an item with a scanner; determining that the scanned item has an electronic article surveillance tag (figs. 2 and 4; col. 5, line 19 through col. 6, line 49); allowing, after the step of determining, deactivation of the electronic article (i.e., sending a signal to enable the deactivator 300) (col. 6, lines 5-8); and disabling (i.e., inhibit scan function) the scanner from scanning other items based upon the step of determining (col. 9, lines 24-34).

Re claim 22: activating an indicia (i.e., prompt the customer) identifying the location of an active electronic

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article surveillance tag deactivator; and wherein the step of allowing further comprises allowing deactivation of the electronic article surveillance tag with an active electronic article surveillance tag deactivator (col. 9, lines 40-46).

Re claim 25: wherein the disabling comprises disabling the scanner from scanning other items until the electronic article surveillance tag has been deactivated (col. 9, lines 24-46).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that

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was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 2-3, 8-9, 13-16, 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andersen et al in view of Plonsky et al (US 5341125 A). The teachings of Andersen et al have been discussed above.

Re claims 2-3, 8-9, 13-16, 20 and 23: Andersen et al has been discussed above, but is silent with respect to determining/detecting whether the item has an active electronic article surveillance tag includes utilizing an electronic article surveillance detector, which is associated with the scanner and comprises a coil and electronic circuitry/logic that is operative to obtain a signal from the coil indicative of the active electronic article surveillance tag, respectively.

Plonsky et al teaches a checkout counter 30A comprises a detector/deactivator 10 having transmitting coil 4 and receiving coil 5 for detecting the presence of an EAS tag 9, a deactivating coil 6 for deactivating the EAS tag 9, and microprocessor 20 for controlling the deactivating coil 6 to generate the deactivating field (figs. 2 & 3; col. 3, line 67 through col. 6, line 21).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the detector/deactivator of Plonsky et al into the system as taught by Andersen et al in order to provide Andersen et al with an advanced wherein the EAS tag is detected by detector/deactivator in lieu of performing a look-up PLU process, which would enhance the system accuracy and reduce time consumption.

7. Claims 4-7 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andersen et al in view of Bellis Jr. et al (US 6,598,791 B2). The teachings of Andersen et al have been discussed above.

Re claims 4-7 and 24: Andersen et al has been discussed above but fails to teach or fairly suggest that the system further comprising a second electronic article surveillance detector associated with a bagwell/security scale of the self-checkout and is operative to determine whether the electronic article surveillance tag has been deactivated by the electronic article surveillance deactivator.

Bellis Jr. et al teaches a bagging station 270 including an electronic article surveillance monitor 300 for detecting the presence of an active electronic article surveillance tag and a security scale 290 (fig. 1; col. 3, lines 37-51).

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It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further employ the electronic article surveillance detector associated with a bagwell/security scale as taught by Bellis Jr. et al into the system of Andersen et al in order to provide Andersen et al with the ability of assuring (i.e., check for an active EAS tag a second time) all paid items having EAS tags are completely deactivated before brought out of the store, which would eliminates fault detection (i.e., failure to deactivate a tag in an active state would set off an alarm when passing through a controlled exit). Furthermore, such modification would provide Andersen et al with a more secure system (i.e., to prevent unscanned/unpaid items being bagged).

8. Claims 10-12 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andersen et al as modified by Plonsky et al as applied to claims 8 and 15 above, and further in view of Bellis Jr. et al (US 6,598,791 B2). The teachings of Andersen et al as modified by Plonsky et al have been discussed above.

Re claims 10-12 and 17-19: Andersen et al/Plonsky et al has been discussed above but fails to teach or fairly suggest that the system further comprising a second electronic article surveillance detector associated with a bagwell/security scale

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of the self-checkout and is operative to determine whether the electronic article surveillance tag has been deactivated by the electronic article surveillance deactivator.

Bellis Jr. et al teaches a bagging station 270 including an electronic article surveillance monitor 300 for detecting the presence of an active electronic article surveillance tag and a security scale 290 (fig. 1; col. 3, lines 37-51).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further employ the electronic article surveillance detector associated with a bagwell/security scale as taught by Bellis Jr. et al into the system of Andersen et al/Plonsky et al in order to provide Andersen et al/Plonsky et al with the ability of assuring (i.e., check for an active EAS tag a second time) all paid items having EAS tags are completely deactivated before brought out of the store, which would eliminates fault detection (i.e., failure to deactivate a tag in an active state would set off an alarm when passing through a controlled exit). Furthermore, such modification would provide Andersen et al/Plonsky et al with a more secure system (i.e., to prevent unscanned/unpaid items being bagged).

9. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andersen et al in view of Bergman et al (US

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5,69,142 A). The teachings of Andersen et al have been discussed above.

Re claim 27: Andersen et al has been discussed above, but is silent with respect to indicating that an intervention is needed if the electronic article surveillance tag has not been deactivated with a predetermined time of allowing the deactivation.

Bergman et al teaches an inquiry is made (i.e., alert operator) as to whether a tag intended to be deactivated is not deactivated after a predefined period of time (e.g., 350 milliseconds) (fig. 3; col. 3, lines 22-32).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further incorporate the step of alerting operator when the detected active EAS tag is not deactivated after a predefined period of time as taught by Bergman et al into the system of Andersen et al in order to ensure that all paid items having EAS tags are completely deactivated before brought out of the store, preventing fault detection when the customer passes through the controlled exit (i.e., failure to deactivate a tag in an active state would set off an alarm when passing through a controlled exit).

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10. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andersen et al in view of Bellis Jr. et al and Bergman et al. The teachings of Andersen et al and Bellis Jr. et al have been discussed above.

Re claim 27: Andersen et al has been discussed above, but is silent with respect to detecting the electronic article surveillance tag with an electronic article surveillance tag detector located in a baggage area of the terminal.

Bellis Jr. et al teaches a bagging station 270 including an electronic article surveillance monitor 300 for detecting the presence of an active electronic article surveillance tag and a security scale 290 (fig. 1; col. 3, lines 37-51).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further employ the electronic article surveillance detector associated with a bagwell/security scale as taught by Bellis Jr. et al into the system of Andersen et al in order to provide Andersen et al with the ability of assuring (i.e., check for an active EAS tag a second time) all paid items having EAS tags are completely deactivated before brought out of the store, which would eliminates fault detection (i.e., failure to deactivate a tag in an active state would set off an alarm when passing through a controlled exit). Furthermore, such modification would provide

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Andersen et al with a more secure system (i.e., to prevent unscanned/unpaid items being bagged).

Andersen et al as modified by Bellis Jr. et al has been discussed above, but is silent with respect to indicating that an intervention is needed if the electronic article surveillance tag has not been deactivated with a predetermined time of allowing the deactivation.

Bergman et al teaches an inquiry is made (i.e., alert operator) as to whether a tag intended to be deactivated is not deactivated after a predefined period of time (e.g., 350 milliseconds) (fig. 3; col. 3, lines 22-32).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further incorporate the step of alerting operator when the detected active EAS tag is not deactivated after a predefined period of time as taught by Bergman et al into the system of Andersen et al/Bellis Jr. et al in order to ensure that all paid items having EAS tags are completely deactivated before brought out of the store, preventing fault detection when the customer passes through the controlled exit (i.e., failure to deactivate a tag in an active state would set off an alarm when passing through a controlled exit).

Response to Arguments

11. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Newly cited references to Andersen et al and Plonsky et al have been used in the new ground of rejections to further meet the limitations of the claimed invention.

12. In response to the Applicant's argument to an authorization from the TC Director for re-opening prosecution (p. 21, line 11 through p. 22, line 4 and p. 22, lines 12-17), the Examiner respectfully apologizes for the unintended improper error (i.e., the Office Action was mixed up with other regular Office Actions of other applications upon completing). Accordingly, this Office Action is authorized and signed by TC Director.

13. In response to the Applicant's argument to "... the Examiner has apparently determined that the BPAI is wrong as to the teaching of Bellis..." (p. 22, lines 5-11), the Examiner respectfully request the Applicant to further review the BPAI Decision wherein the Decision states that Bellis reference does not make up the deficiencies of Swartz and Bergman (p. 7, 1st paragraph).

We have reviewed the Bellis and Garber references applied by the Examiner to address the scale/bagwell and EAS detector circuitry features, respectively, of various dependent claims. We find nothing,

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however, in the Bellis and Garber references, which would overcome the innate deficiencies of Swartz and Bergman discussed supra.

Since Bellis was utilized for a completely different ground of rejection (i.e., in the recent Office Action, Bellis was used to make up the deficiencies of Andersen et al and Plonsky et al), the Examiner respectfully submits that the BPAI Decision did not give any comment regarding the new ground of rejections to Andersen et al in view of Plonsky et al and Bellis nor Andersen et al in view of Bellis. Likewise, Bergman et al was also utilized in a new ground of rejection to make up the deficiencies of Andersen et al.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


The patents to Mason et al (US 6788205 B1); Kane et al (US 6154135 A); Lutz (US 6155486 A); Ghaffari et al (US 6169483 B1) are cited as of interest and illustrate a similar structure to an automatic electronic article surveillance for self-checkout.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uyen-Chau N. Le whose telephone number is 571-272-2397. The examiner can normally be reached on maxi-flex.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on 571-272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Uyen-Chau N. Le
Primary Examiner
Art Unit 2876

June 18, 2006


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